

EXECUTIVE ORDER NO. 10- 05

**DESIGNATING THE STATE DEPARTMENT OF TRANSPORTATION
AS THE STATE OF HAWAII'S
RAIL FIXED GUIDEWAY OVERSIGHT AGENCY**

WHEREAS, the Urbanized Area Formula Program, title 49 United States Code section 5307, authorizes the United States Secretary of Transportation to make grants to states for public transportation capital projects, including fixed rail systems, in the amount of eighty percent of the net project cost of the project; and

WHEREAS, title 49 United States Code section 5330, entitled "State safety oversight," requires a state with an existing or anticipated rail fixed guideway system, that is not regulated by the Federal Railroad Administration, to (1) establish and carry out a "safety program plan for each fixed guideway public transportation system in the State that establishes at least safety requirements, lines of authority, levels of responsibility and accountability and methods of documentation for the system" and (2) designate a state authority having responsibility to "require, review, approve and monitor the carrying out of each plan; to investigate hazardous conditions and accidents on the systems; and to require corrective action to correct or eliminate those conditions"; and

WHEREAS, the federal regulations implementing title 49 United States Code section 5330 as set forth in title 49 Code of Federal Regulations part 659, specifically, title 49 Code of Federal Regulations section 659.9(a), require that "[e]ach state with an existing or anticipated rail fixed guide system regulated by this part shall designate an oversight agency consistent with the provisions of this section"; and

WHEREAS, title 49 Code of Federal Regulations section 659.7(a) states that the Administrator of the Federal Transit Administration may withhold up to five percent of the amount required to be distributed to any state under the Urbanized Area Formula Program if the state has not designated a state oversight agency pursuant to title 49 United States Code section 5330(c) and title 49 Code of Federal Regulations part 659;

WHEREAS, section 29-13, Hawaii Revised Statutes, provides that the Governor "may accept, on behalf of the State, the provisions of any act of Congress making grants or allotments of federal-aid moneys available for expenditure in the State"; and

WHEREAS, section 29-14, Hawaii Revised Statutes, authorizes the Governor, as an officer of the State, to "accept and receive on behalf of the State, and receipt for, any and all grants or allotments of federal-aid moneys made available to the State by or pursuant to an act of Congress, and enter into or make such plan, agreement, or other arrangements with the agency designated by the act of Congress as is necessary to carry out the purposes of the Act"; and

WHEREAS, failure to designate a state oversight agency as required by title 49 United States Code section 5330(c) and title 49 Code of Federal Regulations part 659 may result in the loss of five percent of the grant of eighty percent of the net project cost of the rail fixed guideway system project to the State of Hawaii under title 49 United States Code section 5307;

NOW, THEREFORE, I, Linda Lingle, Governor of the State of Hawaii, pursuant to the provisions of sections 29-13 and 29-14, Hawaii Revised Statutes, do hereby order and direct:

1. That the State Department of Transportation is hereby designated as the state oversight agency to implement the requirements of title 49 Code of Federal Regulations part 659;
2. That the State Department of Transportation shall carry out the provisions of the Federal Transit Administration's regulations regarding state safety and security oversight of rail fixed guideway systems in Hawaii, and protect and promote the public health, safety, and welfare, including oversight of the aspects of the rail fixed guideway system that are not regulated by the Federal Railroad Administration;
3. That the State Department of Transportation shall carry out its responsibilities as directed by title 49 Code of Federal Regulations part 659 and promulgate rail fixed guideway safety and security standards and related

procedures to be used by rail fixed guideway systems in developing their safety and security programs;

4. That the State Department of Transportation may enter into agreements and delegate its powers as necessary to implement this Executive Order;

5. That the rail fixed guideway transit systems not regulated by the Federal Railroad Administration and operating within the State of Hawaii shall comply with the State Department of Transportation's standards, rules, directives, and requirements regarding rail fixed guideway systems; and

6. That this Executive Order shall take effect immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Hawaii.

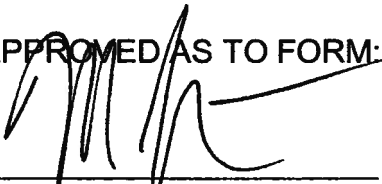
DONE at the State Capitol, Honolulu,
State of Hawaii, this 6th
day of April, 2010.



LINDA LINGLE
Governor of Hawaii

SEAL

APPROVED AS TO FORM:



MARK J. BENNETT
Attorney General